

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
FILED

FEB - 1 2010

Clerk of Court

GREG GLADDEN,
PLAINTIFF

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:09-cv-00032

LARRY MORRISON,
CRYSTAL MORRISON &
S/V JEANETTE MARIE, her sails,
engine, appurtenances, etc., *in rem*,
DEFENDANTS

IN ADMIRALTY

PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' DESIGNATED EXPERT
WITNESS

Plaintiff moves the court to strike Defendants' designated expert witness for failure to produce a copy of his report or any other supporting documents as required by the Scheduling Order herein dated April 16, 2009:

I

While Defendants made a timely designation of an expert witness to testify herein, they failed to produce a copy of his report or any supporting data as required by this Court's Rule 16 scheduling orders. That report was due on January 2, 2010, almost a month ago. This is a mandatory disclosure under FRCP 26(a)(f). The purpose of mandatory disclosures is to accelerate the exchange of basic information about the case and to eliminate the paperwork involved in

requesting that information. 1993 Notes to FRCP 26 at ¶ 2, 9. 1078 O'Connor's Federal Rules-Civil Trials 2010.

II

The last day to file motions, including any motion to exclude or limit expert testimony under Fed.R.Evid. 702 is today. (Dkt. No. 11) Never having seen any report of the expert's proposed testimony, Plaintiff is unable to determine whether a basis for challenge exists, other than for failure to comply with this Court's orders.

III

To allow Defendants to offer any testimony from their designated expert at this late date would constitute unfair surprise. If a party does not provide information as required by FRCP 26 (a) or (e), the party cannot use that information or testimony in a motion, at a hearing, or at trial, unless the party was substantially justified or the nondisclosure was harmless. FRCP 37(c)(1).

This prohibition should be automatic, without the need for a motion. 1993 Notes to FRCP 37 at ¶ 9, p. 1101 O'Connor's Federal Rules – Civil Trials 2010. Plaintiff requests a ruling on this motion to streamline the Court's consideration of Plaintiff's Motion for Summary Judgment.

IV. Conclusion

Plaintiff prays this motion to strike defendants' designated expert witness be granted.

DATED: February 1st, 2010

Respectfully submitted,

/s/


GREG GLADDEN

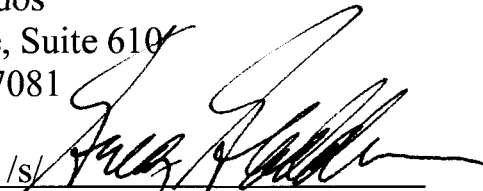
Law Office of Greg Gladden
3017 Houston Avenue
Houston, Texas 77009
Phone: 713.880.0333
Fax: 713.880.4018
State Bar No. 07991300
Southern District Federal ID No. 7236

JAMES C. WINTON
Baker & Hostetler LLP
1000 Louisiana, 20th Floor
Houston, Texas 77002-5009
Phone: 713.646.1304
Fax: 713.751.1717
State Bar No. 21797950
Southern District Federal ID No. 10697

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Plaintiff's Motion for Summary Judgment has been served on counsel of record this 1st day of February 2010 via the Clerk's electronic service and hand delivery at her address:

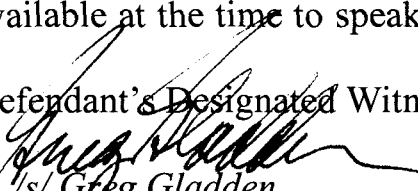
Ms. Noel Lewandos
4848 Loop Central Drive, Suite 610
Houston, Texas 77081

/s/ 

Gregory C. Gladden

CERTIFICATE OF CONFERENCE

I certify that on Monday, February 01, 2010, I attempted to contact Ms. Noel Lewandos, Counsel for Larry and Chrystal Morrison and S/V JEANETTE MARIE, and she was unavailable at the time to speak with me regarding Plaintiff's Motion to Strike Defendant's Designated Witness.



/s/ Greg Gladden

GREG GLADDEN